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EXAMINER

ALIE, GHASSEM

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/532,353	<b>Applicant(s)</b> NYSTROM ET AL.	
	<b>Examiner</b> GHASSEM ALIE	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14, 16-18, 22, 23, 25 and 27-41 is/are pending in the application.
- 4a) Of the above claim(s) 16-18, 25, 27, 31 and 37-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 22, 23, 28-30, 32-36 and 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/10/07 has been entered, wherein a new claim 41 is added.

***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pivotal throttle lever 12 and pivotal safety button 13 as pivotal elements are connected to the second handle section 16 via a handle connection that includes a separate metallic or plastic pin 31 as set forth in claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It should be noted that every claimed Species or embodiment has to be shown in the drawings. The specification may contain many embodiments that are not shown in the drawings. However, when those embodiments are claimed, they must be shown in the drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled,

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the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 14, 22-23, 28-30 and 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 14, "so that the pivotal element rotates about or with the separate metallic or plastic pin, and the pin (31) is not in contact radially with the first handle section (15) when the pin (31) is exposed to no load" is not disclosed in the specification. The specification does not disclose that the safety button 13 is connected to the handle 16 by the pin 31. The specification discloses, "[t]he line wheel 30 transforms the

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movement in the lever 12 for controlling the throttle to an axial movement in the not illustrated gas wire or line connected to the throttle.” The specification also discloses, “[t]he line wheel 30 is secured to the handle section 16 by a separate metal or plastic pin 31.” The specification does not disclose the use of pin 31 without the use of line wheel 30 for connecting the throttle lever 12 or the safety button 13 to the second handle section 16. IN this case, it is not clear how the safety button 13 can be connected via line wheel 30 and pin 31 to the second handle section 16. The specification also does not disclose that the pivotal elements rotate with the separate metallic or plastic pin. In addition, the specification does not disclose that “the pin (31) is not in contact radially with the first handle section (15) when the pin (31) is exposed to no load.” The specification discloses that the handle section 15 is provided with a bigger diameter than the diameter of pin 31 to support the pin 31 when it is exposed to high loads.” However, the specification does not disclose that the pin 31 is not in contact radially with the first handle section 15 when the pin 31 is exposed to no load. The pin 31 could be in direct or indirect contact with the handle section 15 via other components within the cavity created by joined handle sections. In addition, the pin 31 could be also supported by the supporting edge 36 when the pin is exposed to no load.

Regarding claim 41, the specification does not disclose, “the operation of at least the lever (12) or the button (13) is tolerant towards deviating relative positions of the handle sections (15, 16).” The specification does not disclose how the operation of the lever 12 or the button 13 is tolerant deviating relative positions of the handle sections. It is not clear how the handle sections are expected to move relative to each other while they are permanently welded together.

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5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 22-23 and 32-36 and 41 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 22, "the entire pin (23)" lacks antecedent basis. It should be noted that the pivotable connection set forth in claim 14 includes pin 31 not pin 23. It appears that claims 22-23 have to be cancelled in view of the amendment to claim 14 that limits the pivotal connection to a separate metallic or plastic pin 31 pressed into a prepared opening 32. It is not clear how another pin such as pin 23 is utilized in a different pivotable connection for the pivotable elements.

Regarding claim 32, "the lever or button is secured in only one of the handle sections (16)" is not confusing. It is not clear how the lever or button is only secured to one of the handle sections while the handle sections are permanently welded or glued together as a single piece. In this case, the lever 12 and the button 13 also at least in directly secured to the other handle section 15. In addition, one end of the pin 25 or pin 31 is secured to the recesses or hole in the handle section 13.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 32-35 and 41, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable Lowe et al. (5,738,064), hereinafter Lowe, in view of Dohse et al. (5,065,476), hereinafter Dohse. Regarding claims 32 and 33, as best understood, Lowe teaches a handheld engine powered tool 10 including a pivoting lever 38 a pivoting button 40 for controlling the power of the tool. Lowe also teaches that the lever 38 controls the throttle of the engine and the button is a safety button. Lowe also teaches that the handle is made of at least two handle sections 48, 50 and the lever and the button are connected to the handle. Lowe also teaches that the handle sections 48, 50 are made of plastic and are permanently joined together as so to form a leak-inhibiting joint therebetween such that a portion of the handle forms a fuel tank 54. It should be noted that Lowe teaches that handle sections 48, 50 are vibrationally welded together to produce strong and air-tight joints. See col. 5, lines 5-10 in Lowe.

Lowe does not explicitly teach that that lever or button is secured in only one of the handle sections. However, Dohse teaches a handle 3 including two handle portions 27, 28. Dohse also teaches a throttle lever 11 and a lever lock or safety button 13 are pivotally attached to only one of the handle portions 27, so that the functions of the pivotable elements are separated from the alignment of the first handle section relative to the second handle section. It should be noted that the lever 11 and safety button 13 are secured to the handle section 27 via pins as shown in Figs. 5 and 8. The pins do not contact the other handle portion 28. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, with the pivoting mechanism, as taught by Dohse, in order to pivotally connect the lever and the button to the handle in a manner that the lever and the handle are

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only secured to one side of the handle rather than both sides of the handle and reduce the cost of molding and parts or as an alternative way that produces the same result.

Regarding claims 34 and 35, Lowe, as modified by Doshe, teaches that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. It appears that the safety button in Lowe has to be inherently bushed or pressed in order to increase the throttle of the engine by the throttle lever. In addition, Dohse teaches that teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed.

Regarding claim 41, as best understood, Lowe, as modified by Doshe, teaches that the operation of at least the lever or the button is tolerant towards deviating relative positions of the handle sections.

To the degree that it could be argued that Lowe and Dohse do not teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button, the rejection below is applied.

9. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe in view of Dohse, as applied to claim 32, and in further view of Wolf (5,215,049). Regarding claim 34, Lowe does not explicitly teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. However, Wolf teaches a power tool having a throttle lever 16 and a safety button 17 having an arm moving when the button is pressed. Wolf also teaches that the arm inhibiting the movement of the lever when the button is not pressed. Wolf also teaches that



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lever 16 and the button 17 are pivotally secured to a handle. Wolf also teaches that the button 17 stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. See Fig. 3 in Wolf. It would have been obvious to a person of ordinary skill in the art to provide Lowe's apparatus, as modified above, with the arm, as taught by Wolf, in order to ensure that the engine operates only when the lever and the button are simultaneously pressed.

10. Claim 36, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable Lowe in view of Dohse and in further view of Yoho (3,494,431). Regarding claim 35, as best understood, Lowe teaches a handheld engine powered tool 10 including a pivoting lever 38 a pivoting button 40 for controlling the power of the tool. Lowe also teaches that the lever 38 controls the throttle of the engine and the button is a safety button. Lowe also teaches that the handle is made of at least two handle sections 48, 50 and the lever and the button are connected to the handle. Lowe also teaches that the handle sections 48, 50 are made of plastic and are permanently joined together as so to form a leak-inhibiting joint therebetween such that a portion of the handle forms a fuel tank 54. It should be noted that Lowe teaches that handle sections 48, 50 are vibrationally welded together to produce strong and air-tight joints. See col. 5, lines 5-10 in Lowe.

Lowe, as modified by above, does not explicitly teach a specific pivotal connection of the pivoting elements to the second handle section. For example, Lowe, as modified by Nakayama, does not explicitly teach a pivotal connection that includes a support section with a pocket, and a locking pin acting as an axle for the pivotable element and inserted in a hole in the pivoting element. However, the use of different securing means or mechanisms for a

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trigger lever, button, or the like is old and well known in the art. In this case, e.g., Yoho teaches a handle section 54B has a support section in a shape of a pocket. Yoho also teaches a pin 45 is inserted through the hole of a trigger 44 and in the two openings of the support section or the pocket. Yoho also teaches that the diameter of the hole is larger than the diameter of the locking pin. See Fig. 6 in Yoho. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, as modified above, with a fastening or securing means, as taught by Yoho, in order to secure the lever to the second handle section by an alternative mechanism that produces the same result and pivotally connects the lever to the handle. It should be noted that the use of different fastening means or securing means that produce the same result are art-recognized equivalents and it is within the skill of a person of ordinary skill in the art to substitute one for another.

11. Claims 14 and 28-30, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable Lowe in view of Dohse and in further view of Brown (2,908,263).

Regarding claims 14, as best understood, Lowe teaches a handheld engine powered tool 10 including a pivoting lever 38 a pivoting button 40 for controlling the power of the tool. Lowe also teaches that the lever 38 controls the throttle of the engine and the button is a safety button. Lowe also teaches that the handle is made of at least two handle sections 48, 50 and the lever and the button are connected to the handle. Lowe also teaches that the handle sections 48, 50 are made of plastic and are permanently joined together as so to form a leak-inhibiting joint therebetween such that a portion of the handle forms a fuel tank 54. It should be noted that Lowe teaches that handle sections 48, 50 are vibrationally welded together to produce strong and air-tight joints. See col. 5, lines 5-10 in Lowe.

Lowe does not explicitly teach that each of the pivotable elements is directly pivotally connected to the second handle section by a pivotal connection that has a pin which is not in contact radially with the first handle section when the pin is exposed to no load. . However, Dohse teaches a handle 3 including two handle portions 27, 28. Dohse also teaches a throttle lever 11 and a lever lock or safety button 13 are pivotally attached to only one of the handle portions 27, so that the functions of the pivotable elements are separated from the alignment of the first handle section relative to the second handle section. It should be noted that the lever 11 and safety button 13 are secured to the handle section 27 via pins as shown in Figs. 5 and 8. The pins do not contact the other handle portion 28 when they are exposed to no load. In addition, Dohse also teaches that the pivotal elements are directly pivotally connected to the second handle portion 27. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, with the pivoting mechanism, as taught by Dohse, in order to pivotally connect the lever and the button to the handle in a manner that the lever and the handle are only secured to one side of the handle rather than both sides of the handle and reduce the cost of molding and parts or as an alternative way that produces the same result.

Lowe, as modified by above, does not explicitly teach that the pin is pressed or pushed into a prepared opening in the second handle section. However, the use of different securing means or mechanisms for a trigger lever, button, or the like is old and well known in the art. In this case, e.g., Brown. Brown teaches a throttle lever 36 connected to a wall 38 by a pin 37 that is pressed or pushed into a prepared opening in the wall. See Figs. 2 and 4 in Brown. It would have been obvious to a person of ordinary skill in the art to provide Lowe's

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power tool, as modified above, with the pin that is pushed or pressed in an opening in the wall, as taught by Brown, in order to secure the lever to the second handle section by an alternative mechanism that produces the same result and pivotally connects the lever or safety button to the handle. It should be noted that the use of different fastening means or securing means that produce the same result are art-recognized equivalents and it is within the skill of a person of ordinary skill in the art to substitute one for another.

Regarding claims 28 and 29, Lowe, as modified by Doshe, teaches that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. It appears that the safety button in Lowe has to be inherently bushed or pressed in order to increase the throttle of the engine by the throttle lever. In addition, Dohse teaches that teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed.

Regarding claim 30, Lowe teaches everything noted above including that the handle sections 48, 50 are made of plastic material and permanently joined together either by welding or gluing. See col. 3, lines 6-16 in Lowe.

12. Claims 22 and 23, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable Lowe in view of Dohse and Brown, and in further view of Yoho (3,494,431).

Regarding claims 22 and 23, as best understood, Lowe, as modified by above, does not explicitly teach a specific pivotal connection of the pivoting elements to the second handle section. For example, Lowe, as modified by Doshe, does not explicitly teach a pivotal connection that includes a support section with a pocket, and a locking pin acting as an axle

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for the pivotable element and inserted in a hole in the pivoting element. However, the use of different securing means or mechanisms for a trigger lever, button, or the like is old and well known in the art. In this case, e.g., Yoho teaches a handle section 54B has a support section in a shape of a pocket. Yoho also teaches a pin 45 is inserted through the hole of a trigger 44 and in the two openings of the support section or the pocket. Yoho also teaches that the diameter of the hole is larger than the diameter of the locking pin. See Fig. 6 in Yoho. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, as modified above, with a fastening or securing means, as taught by Yoho, in order to secure the lever to the second handle section by an alternative mechanism that produces the same result and pivotally connects the lever to the handle. It should be noted that the use of different fastening means or securing means that produce the same result are art-recognized equivalents and it is within the skill of a person of ordinary skill in the art to substitute one for another.

To the degree that it could be argued that Lowe and Dohse do not teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button, the rejection below is applied.

13. Claims 28 and 29, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe in view of Dohse and Yoho, as applied to claim 14, and in further view of Wolf (5,215,049). Regarding claims 28 and 29, Lowe does not explicitly teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. However, Wolf teaches a power tool having a throttle lever 16 and a safety button 17 having an arm moving when the button is

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pressed. Wolf also teaches that the arm inhibiting the movement of the lever when the button is not pressed. Wolf also teaches that lever 16 and the button 17 are pivotally secured to a handle. Wolf also teaches that the button 17 stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. See Fig. 3 in Wolf. It would have been obvious to a person of ordinary skill in the art to provide Lowe's apparatus, as modified above, with the arm, as taught by Wolf, in order to ensure that the engine operates only when the lever and the button are simultaneously pressed.

#### ***Response to Amendment***

14. Applicant's arguments with respect to claim 14, 22, 23, 28-30, 32-36 and 41 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tsunoda et al. (5,862,713) teaches a handheld powered tool including handle having at least a lever or a button.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501.

The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ghassem Alic/

Primary Examiner, Art Unit 3724

January 21, 2010